

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
PHYLLIS A. WILSON)	File No. 0006106629
and)	
ROBERT B. WILSON)	File No. 0006136706
)	
Requests for Waiver of Section 90.609(b) of the)	
Commission's Rules to Permit Assignment of)	
Licenses for Stations WQSF861 and WQSG679)	

ORDER

Adopted: April 17, 2014

Released: April 18, 2014

By the Deputy Chief, Mobility Division, Wireless Telecommunications Bureau:

1. This *Order* addresses two requests for waiver of the restriction in Section 90.609(b) of the Commission's rules against assignment of 800 MHz licenses before the stations have been constructed.¹ Phyllis A. Wilson seeks to assign the license for 800 MHz Trunked Specialized Mobile Radio (SMR) Station WQSF861, West Des Moines, Iowa; and Robert B. Wilson seeks to assign the license for 800 MHz Trunked SMR Station WQSG679, Sioux Falls, South Dakota.² As discussed below, we deny both waiver requests and will dismiss the associated applications.

I. BACKGROUND

2. As part of the rebanding of the 800 MHz band to resolve interference between commercial and public safety systems, the Commission created the Expansion (815-816/860-861 MHz) and Guard (816-817/861-862 MHz) Bands in order to provide spectral separation between commercial licensees operating in the enhanced SMR band operating above 817/862 MHz and public safety licensees operating below 815/860 MHz.³ The Commission announced in 2008 that Expansion and Guard Band channels would become available for licensing when the Public Safety and Homeland Security Bureau and the Wireless Telecommunications Bureau (the Bureaus) announce that the required level of clearing has been achieved in a particular region.⁴ In 2012, the Bureaus announced that band reconfiguration was complete in eleven regions, and that Expansion and Guard Band channels in those regions would be available for licensing on January 17, 2013.⁵ The Bureaus specifically noted that failure to meet the

¹ 47 C.F.R. § 90.609(b).

² Nothing in the record indicates that the Phyllis and Robert Wilson are relatives.

³ See Improving Public Safety Communications in the 800 MHz Band, *Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, and Order*, WT Docket No. 02-55, 19 FCC Rcd 14969, 15053-55 ¶¶ 154-58 (2004).

⁴ See Improving Public Safety Communications in the 800 MHz Band, *Order*, WT Docket No. 02-55, 23 FCC Rcd 15966, 15972-73 ¶ 17 (2008).

⁵ See Public Safety and Homeland Security Bureau and Wireless Telecommunications Bureau Announce the Completion of 800 MHz Band Reconfiguration in Certain NPSAC Regions, *Public Notice*, WT Docket No. 02-55, 27 FCC Rcd 14775, 14780 (PSHSB/WTB 2012).

station construction and operation requirements would result in automatic license cancellation.⁶ They advised prospective applicants that requests for waiver of these requirements would face “strict scrutiny,” and that “lack of financing, lack of site access, transfer of control or assignment of authorization may not be used to justify a waiver.”⁷ The applications for Stations WQSF861⁸ and WQSG679,⁹ both of which are authorized to operate on Guard Band frequencies, were filed on January 17, 2013.

3. The license for Station WQSF861 was granted to Phyllis A. Wilson on September 16, 2013. On January 21, 2014, she filed the above-captioned application to assign the license to Zalman Sirota. She requests a waiver of Section 90.609(b) on the grounds that she expected the license to be issued within two years when she originally invested in filing the application four years ago, but due to various regulatory issues the process took four years.¹⁰ She also states that she is now unable to construct the station because the cost estimate has doubled and she may need to spend the money set aside for construction costs on her husband’s health.¹¹

4. The license for Station WQSG679 was granted to John M. Wilson on September 17, 2013. On January 7, 2014, Robert B. Wilson filed an application for involuntary assignment of the license on the grounds that John M. Wilson died on July 16, 2013 (while the initial application was pending).¹² The involuntary assignment to Robert B. Wilson was granted on January 18, 2014. On February 18, 2014, Robert B. Wilson filed the above-captioned application to assign the license to Jeffrey J. Downs. Robert B. Wilson requests a waiver of Section 90.609(b) on the grounds that the death of John M. Wilson constituted a changed circumstance, and he lacks the ability to construct the facilities.¹³

II. DISCUSSION

5. Section 90.609(b) provides that a license to operate a radio system above 800 MHz may not be assigned or transferred prior to the completion of construction, except where there is no substantial change in ownership or control; or the assignment or transfer is involuntary due to the insolvency, bankruptcy, incapacity, or death of the transferor.¹⁴ The rule is designed to prevent trafficking in site-specific licenses and spectrum warehousing by taking back unused spectrum.¹⁵ Additionally, Section 1.948(i) of the Commission’s rules authorizes the Commission to review assignment and transfer applications to determine whether the transaction is for purposes of trafficking in service authorizations,¹⁶ and to require a showing that the authorization was not obtained principally for speculation or profitable resale, such as a demonstration that the proposed assignment is due to changed circumstances after the

⁶ *Id.* at 14782.

⁷ *Id.*

⁸ FCC File No. 0005608965 (filed Jan. 17, 2013).

⁹ FCC File No. 0005609397 (filed Jan. 17, 2013).

¹⁰ See Waiver Request, FCC File No. 0006106629, at 1 (filed Jan. 21, 2014).

¹¹ *Id.* at Phyllis A. Wilson Statement under Penalty of Perjury.

¹² See FCC File No. 0006061612 (filed Jan. 7, 2014).

¹³ See Waiver Request, FCC File No. 0006136706, at 1 (filed Feb. 18, 2014).

¹⁴ 47 C.F.R. § 90.609(b).

¹⁵ Amendment of Part 90 of the Commission’s Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, *Second Report and Order*, GN Docket No. 92-253, 12 FCC Rcd 19079, 19096 ¶ 40 (1997).

¹⁶ 47 C.F.R. § 1.948(i). Trafficking consists of obtaining or attempting to obtain an authorization for the principal purpose of speculation or profitable resale rather than the provision of communications service to the public or for the licensee’s private use. 47 C.F.R. § 1.948(i)(1).

grant of the authorization or that the proposed assignment is incidental to a sale of other facilities or a merger.¹⁷

6. Under Section 1.925 of the Commission's rules, waiver is appropriate where (i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and grant of the requested waiver would be in the public interest; or (ii) in view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.¹⁸ We conclude that neither Phyllis A. Wilson nor Robert B. Wilson has met the waiver standard.

7. Phyllis A. Wilson seeks a waiver on the grounds that the Bureaus opened the Expansion and Guard Band filing window and issued her later than she expected, and she is no longer as able to construct the facilities as she was when she initially invested in the venture four years ago. That the timing of the Bureaus' actions – which applied to all applicants equally – did not match Ms. Wilson's original expectations does not entitle her to relief. Moreover, as noted above, the Bureaus specifically warned prospective applicants before the filing window opened that lack of financing would not warrant a waiver of the rules regarding station construction, but Ms. Wilson chose to proceed with her application. We conclude that she has not demonstrated grounds for granting a waiver.

8. Robert B. Wilson seeks a waiver on the grounds that he acquired the license upon the death of his brother. Section 90.609(b) specifically exempts involuntary assignments due to the licensee's death from the prohibition on assignment or transfer of licenses for unconstructed 800 MHz stations, and Robert B. Wilson availed himself of this exception when he acquired the license from the estate of John M. Wilson. He appears to be no differently situated from any other licensee who acquired a license for an unconstructed 800 MHz station by involuntary assignment upon the licensee's death. The rule does not authorize such involuntary licensees to further assign the licenses prior to station construction. Had the Commission intended to permit such assignments, it would have done so in the rule. Consequently, we conclude that the circumstances presented do not constitute a basis for waiving the prohibition on assignment or transfer of licenses for unconstructed 800 MHz stations.

III. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED THAT, pursuant to Sections 4(i) and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309(j), and Sections 1.925, 1.934(d), and 90.609(b) of the Commission's Rules, 47 C.F.R. §§ 1.925, 1.934(d), 90.609(b), the waiver requests filed by Phyllis A. Wilson on January 21, 2014, and Robert B. Wilson on February 18, 2014, ARE DENIED, and applications FCC File Nos. 0006106629 and 0006136706 SHALL BE DISMISSED.

10. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Scot Stone
Deputy Chief, Mobility Division
Wireless Telecommunications Bureau

¹⁷ 47 C.F.R. § 1.948(i)(2).

¹⁸ See 47 C.F.R. § 1.925(b)(3).